IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2006

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Second Appeal No. 696 of 2006
and
M.P. No. 1 of 2006
-o-

Igbal Batcha .. Appellant /Defendant

Versus

Musthrijohn .. Respondent/Respondent

Second appeal under Section 100 C.P.C. against the Judgment and Decree dated 08.12.2005 made in A.S. No. 5 of 2005 on the file of the Additional District Judge, Fast Track Court No.IV, Bhavani, Erode District confirming the decree and judgment dated 06.03.2003 made in O.S.N o. 155 of 2002 on the file of the Principal District Munsif, Bhavani.

For Appellant : Mr. Lakshmanasamy for
M/s. V.N.S. Law Firms
For Respondent : Mr. N. Manokaran

JUDGMENT

This second appeal was not admitted and only notice was ordered to the respondent on 10.10.2006 and after service, it is listed today for admission.

2. The defendant in O.S.No. 155 of 2002 on the file of Principal District Munsif Court, Bhavani is the appellant in this second appeal. Originally, the said suit was filed by the father of the appellant and respondent herein for injunction against the appellant herein and the same was decreed as prayed for. As against the same, the appellant herein filed A.S. No. 5 of 2005 before the Additional District Judge, Fast Track Court No.IV, Bhavani, Erode. During the pendency of the first appeal, the father of the parties herein, who instituted the suit against the appellant herein died, hence, the appellant herein filed I.A.No. 47 of 2004 to implead his sister, the respondent herein as a party in the first appeal, which was allowed by the first appellate Court on 20.10.2004. Thereafter, the first appellate Court after hearing both sides dismissed the appeal confirming the decree and judgment passed by the trial court, hence, the present second appeal.

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3. The learned counsel appearing for the appellant submitted that even during the pendency of the suit, he was residing in Door

No.129, Rana Nagar, Kurupanaickan Palayam, Bhavani Taluk, Erode District, which is adjacent to Door No.128 and both these properties are described in the plaint as suit properties. The trial court, without considering the fact that on the date of filing of the suit the appellant was also in possession of a part of the suit properties, rejected his claim, however, the lower appellate Court, after the demise of his father, ought have set aside it since he and the respondent herein are his legal heirs; that the respondent is not at all residing in the suit property, but she was residing elsewhere in Bhavani Taluk, which is evident in I.A. No. 47 of 2004 filed by him to implead her, wherein her residential address is clearly found mentioned; that the first appellate Court without considering the said fact has erroneously confirmed the decree and judgment of the trial court and prayed for allowing the second appeal.

4. Per contra, Mr. Manoharan, learned counsel appearing for the respondent submitted that the appellant has admitted that the respondent is one of the legal heirs of the deceased plaintiff and filed an application to implead her, which was also allowed by the first appellate Court and in view of the same, whatever the relief granted to the deceased plaintiff must be extended to her also and considering the same, the first appellate Court rightly dismissed the appeal; that the courts below concurrently found that the appellant is not at all in possession of the suit property; that even assuming the appellant is entitled to any share in the suit property, it has to be claimed by him in accordance with Law and in any event, the injunction granted by the courts below need not be disturbed at this stage and prayed for dismissal of the second appeal.

5. On the above contentions of the counsel for either side, this Court perused the material records. It is seen that the suit was filed by the deceased father/Plaintiff against his son namely the appellant herein on the ground that he is the title holder in possession and the appellant has no right or title to interfere in it. In support of the said contention, the deceased plaintiff marked Ex.A1 to A6 and examined himself as PW1. The appellant herein has also filed Ex.B1 and examined himself as DW1.

6. The appellant herein contested the suit stating that he is all along residing in Door No.129, which is part of the suit property; that during the pendency of the first appeal, his father died and he alleged that he is also one of the co-sharers of the suit property. The lower appellate Court without noting the alleged circumstance and the devolution of interest has mechanically confirmed the decree and judgment passed by the trial court.

7. No doubt, the appeal has to be decided on the basis of rights of the parties which existed when the suit was brought. An exception to the Rule is to be made in cases wheren on account of altered conditions in the suit, the original relief claimed has become inappropriate or infructuous or in order to shorten the litigation or to do complete justice, it is incumbent to take notice of subsequent events. In the decision reported in (Shikharchand Jain vs. Digamber Jain Praband Karini Sabha and others) AIR 1974 SC 1178

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in Para No.11, it was held thus:-

> "11. .....Ordinarily, a suit is tried in all its stages on the cause of action as it existed on the date of its institution. But it is open to a Court including a Court of appeal to take notice of events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances where it is shown that the relief claimed originally has (1) by reasons of subsequent change of circumstances become inappropriate; or (2) where it is necessary to take notice of the changed circumstances in order to shorten the litigation, or (3) to do complete justice between the parties (See Raj Charan v. Biswanath, AIR 1915 Cal. 103)"

8. Similarly, in (M/s. M. Laxmi & Co v. Dr. Anant R. Deshpande & another) AIR 1973 Supreme Court 171, it is held in Para-27 thus:-

> "27. It is true that the Court can take notice of subsequent events. These issues are where the Court finds that because of altered circumstances like devolution of interest it is necessary to shorten litigation. Where the original relief has become inappropriate by subsequent events, the Court can take notice of such changes. If the Court finds that the judgment of the Court cannot be carried into effect because of change of circumstances the Court takes notice of the same. If the Court finds that the matter is no longer in controversy the Court also take notice of such event. If the property which is the subject-matter of suit is no longer available the Court will take notice of such event. The Court take notice of subsequent events to shorten litigation, to preserve rights of both thep arties and to subserve the ends of justice. Judged by these principles it is manifest that in the present case suits are pending. On the one hand the appellant has challenged the decree obtained by Ashar and others as also the warrant of execution. On the other hand, the suit instituted by Ashar and others against inter alia the appellant in 1965 for possession is pending. This Court cannot say with exactitude that any final decision has been reached on the respective and rival rights and claims of the appellant and the respondent. It is, therefore, neither desirable nor practicable to take notice of any fact on the rival version of the parties as to subsequent events."

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9. In view of the above discussion and the decision of the

Honourable Supreme Court referred to above, the decree and judgment of the Courts below are set aside. The second appeal is allowed. No costs. Connected Miscellaneous Petition is closed. It is made clear that when the parties herein seek appropriate remedy or remedies if any, it can be considered by the courts on merits untramelled by the observations made by this Court in this second appeal.

rsh

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Additional District Judge
(Fast Track Court No.IV)
Bhavani, Erode District.

2. The Principal District Munsif
Bhavani

3. The Section Officer,
Vernacular Records Section,
High Court
Madras - 600 104

1 CC TO N. MANOKARAN, ADVOCATE SR NO 61808

1 CC TO M/S VNS LAW FIRMS, SR NO 62402

SA No. 696 of 2006

12.12.2006

SGL(CO)

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